

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

-----x  
IN THE MATTER OF THE )  
CARROLL & DUBIES SUPERFUND SITE )  
 )  
CARROLL & DUBIES SEWAGE DISPOSAL, INC.; ) AMENDMENT TO  
KOLMAR LABORATORIES, INC.; and ) ADMINISTRATIVE ORDER  
WICKHEN PRODUCTS, INC., )  
 ) U.S. EPA INDEX NO.  
 ) II-CERCLA-95-0221  
Respondents. )  
 )  
Proceeding Under Section 106(a) of the )  
Comprehensive Environmental Response, )  
Compensation, and Liability Act of 1980, )  
as amended (42 U.S.C. § 9606(a)). )  
-----x

2/3/97

I. JURISDICTION

1. Administrative Order Index Number II-CERCLA-95-0221 ("Order") was issued by the United States Environmental Protection Agency ("EPA") to Carroll & Dubies Sewage Disposal, Inc. ("C&D"), Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") (collectively referred to as the "Respondents") on September 29, 1995. The Order was issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the EPA by Executive Order 12580, dated January 23, 1987, and redelegated to the Regional Administrator of EPA, Region II. Pursuant to Section 106(a) of CERCLA, the New York State Department of Environmental Conservation has been notified of the Order and this Amendment to the Order. As revised by this Amendment, the Order remains in full force and effect.

II. AMENDMENT

2. Consistent with the September 30, 1996 Record of



Decision for the second operable unit ("OU2 ROD") issued by EPA with respect to the Carroll and Dubies Sewage Disposal, Inc. Superfund Site (the "Site"), the Order is hereby amended as follows:

a. Paragraph 1, first sentence, is hereby amended by inserting "and the September 30, 1996 Record of Decision ("OU2 ROD")" between "...March 31, 1995 Record of Decision" and "for the Carroll & Dubies Superfund Site ..."

b. Paragraph 2 is hereby amended by inserting "in an industrial area" between "... is located" and "at the north end...", and by deleting the second sentence.

c. Paragraphs 17, 27.j., 27.l., 36, the first sentence of paragraph 37 (up to the colon), and 39.a.i. are hereby amended to add the words "and the OU2 ROD" whenever reference is made to "the ROD" or "the OU1 ROD".

d. The following sentence is hereby added at the end of Paragraph 10:

Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for the second operable unit remedial action on August 28, 1996.

e. Paragraph 13 is hereby amended by replacing "presently are performing" with "performed".

f. A new paragraph 13A is hereby added as follows:

EPA issued a second operable unit Record of Decision (the "OU2 ROD") for the Site on September 30, 1996, in which the Agency selected the remedial action to be implemented for the second operable unit at the Site. The remedial action selected in the OU2 ROD calls for, among other things, natural attenuation of organic contaminants in the groundwater, implementation of institutional controls for the purpose of restricting installation and use of groundwater wells throughout the contaminated groundwater plume, monitoring of the groundwater to evaluate improvement in groundwater quality and ensure the effectiveness of the remedy, and

sampling in Gold Creek to ensure that Site-related contaminants do not impact the creek. EPA's OU2 ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

g. Paragraph 27 is hereby amended as follows:

1. Subparagraph e. is hereby deleted and replaced with the following:

"Institutional Controls" shall mean land and/or water use restrictions which may include, but need not be limited to, restrictions in the form of contractual agreements, deed restrictions, state or local laws, regulations, ordinances or other governmental action.

2. Subparagraph o. is hereby amended to state as follows:

"Site" means the Carroll & Dubies Superfund Site, located at the north end of Canal Street in the Town of Deerpark, Orange County, New York and depicted generally on the map attached as Figure 1. The Site includes the parcels where Carroll & Dubies Sewage Disposal, Inc. has conducted operations (including but not limited to waste disposal activities) and all areas to which hazardous substances that have been released at or from those parcels have migrated.

3. A new subparagraph s. is hereby added as follows:

"OU2 ROD" means the Record of Decision document issued by EPA on September 30, 1996 (and all attachments thereto) in which the remedy for the second operable unit at the Site was selected by the Regional

Administrator of EPA Region II. The OU2 ROD is attached to this Order as Appendix I.A, and is incorporated herein by reference.

4. A new subparagraph t. is hereby added as follows:

"This Order" or "the Order" shall mean both the Order dated September 29, 1995, Index No. II-CERCLA-95-0221, and this Amendment to Administrative Order.

- h. Paragraph 32 is hereby revised to state as follows:

At least 30 days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Respondent conveying the interest shall give the grantee written notice of this Order and any instrument by which an interest in real property has been conveyed that confers a right of access to the Site or any other property (hereinafter referred to as "access easements"), and any Institutional Controls in the form of deed restrictions that have been filed with respect to the property pursuant to Section XXI of the Order. At least 30 days prior to such conveyance, the Respondent conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Order and access easements or Institutional Controls in the form of deed restrictions was given to the grantee. In the event of any such conveyance, the Respondents' obligations under this Order, including their obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section XXI below, shall continue to be met by the Respondents. In no event shall the conveyance release or otherwise affect the liability of the Respondents to comply with all provisions of this Order. If the United States approves, the grantee may perform some or all of the Work under this Order.

- i. A new Paragraph 36A is hereby added as follows:

Efforts to Coordinate with Non-parties to this Order.  
Respondents shall make best efforts to coordinate in the performance of the Work required by this Order with any person not a party to this Order who is a recipient of a separate administrative order by EPA concerning the Site (or who enters into a settlement with EPA concerning the Site) and who offers to perform or, in lieu of performance to pay for, in whole or in part, the Work required by this Order. Best efforts to coordinate shall include, at a minimum:

- (a) Replying in writing within a reasonable period of time to an offer to perform or pay for the Work required by this Order;
- (b) Engaging in good-faith negotiations with any person not a party to this Order who offers to perform or to pay for the Work required by this Order; and
- (c) Good-faith consideration of a good-faith offer to perform or pay for the Work required by this Order.

- j. Paragraph 37 is hereby amended as follows:

1. Subsection j. is hereby deleted and replaced with the following:

Implementation of a semi-annual groundwater monitoring program to evaluate the rate and extent of reduction of the organic contaminants in the groundwater and to assess natural attenuation parameters.

2. A new subsection p. is hereby added as follows:

Implementation of a monitoring program to sample surface water and sediments in Gold Creek, south of the Site.

- k. A new Paragraph 38A is hereby added as follows:
- 38A. a. Within forty-five (45) days of the effective date of EPA's June 1997 Amendment of this Order, Respondents shall submit to EPA for review and approval proposed addenda to the RD Work Plan, SAMP, RD QAPP, and Site Management Plan ("SMP") submitted and approved pursuant to paragraph 38 above. The addenda shall include the following:
- i. A plan for semi-annual groundwater monitoring throughout the contaminated groundwater plume to evaluate the rate and extent of reduction of organic contaminants in the groundwater and to assess natural attenuation parameters. The plan shall include a schedule for submission of semi-annual monitoring data and an annual report. The annual report shall include at a minimum: 1) comprehensive groundwater monitoring data from all previous groundwater monitoring and sampling events relevant to the groundwater monitoring plan implemented; 2) an analysis of the level of the contaminants in the groundwater (e.g., whether contaminant migration has been effectively prevented or stabilized, whether there have been any reductions or changes in the concentration of contaminants in the groundwater); 3) time versus concentration plots for contaminants and wells; 4) an evaluation of whether the concentration trends in the groundwater plume are consistent with the predictions of the groundwater modeling effort conducted during the OU2 RI/FS; and

5) an evaluation of the groundwater data collected around the containment cell to determine whether the containment cell is functioning properly.

ii. A plan for sampling surface water and sediments in Gold Creek, south of the Site, which includes sampling locations, parameters and frequency. Surface water sampling shall be conducted during the first year of the monitoring program and sediment sampling shall be conducted on a semi-annual basis. The plan shall include a schedule for submission of semi-annual data and an annual report evaluating said data.

b. EPA will either approve the addenda to the RD Work Plan, SAMP, RD QAPP, and SMP or will require modifications of them in accordance with the procedures set forth in Section XV (EPA Review of Submissions) of the Order. Upon approval by EPA, the addenda shall be deemed incorporated into the RD Work Plan, SAMP, RD QAPP, and SMP, respectively, and the Order and become enforceable under the Order.

c. Respondents shall implement the EPA-approved addenda in accordance with the schedules contained therein.

1. A new Paragraph 58.e is hereby added as follows:

On request of EPA and subject to any applicable claims of privilege(s), Respondents shall submit to EPA all documents in their possession, custody, or control relating to (1) any offer to perform or pay for, or (2) the performance of or payment for, the Work required by this Order by any party or non-party to this Order.

m. Paragraph 66 is hereby amended by deleting "Sharon Trocher" and replacing it with "Maria Jon", deleting "New York/Caribbean Superfund Branch I" and replacing it with "New York Remediation Branch" and deleting "(212)637-3965" and replacing it with "(212)637-3967".

n. Paragraph 73 is hereby amended to state as follows:

73. a. Respondents shall provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site and any other property to which access is required to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD, to the extent that the property is owned by, or access to the property is controlled by, any of the Respondents, for the purpose of conducting any activity related to this Order, including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to EPA;
- iii. Conducting investigations relating to contamination or conditions at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Inspecting and copying records, operating log, contracts, or other documents maintained or generated by Respondents or their agents;
- vii. Assessing Respondents' compliance with this Order; and



viii. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by Paragraph 74 of this Order or the Institutional Controls established pursuant to this Order.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Respondents to which access is needed to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD, for each parcel of property such Respondent shall record in the Registry of Deeds of Orange County, New York, access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the other Respondents and their representatives, or
- iv. other appropriate grantees,

a right of access, running with the land, for the purpose of conducting any activity related to this Order, including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. Respondents shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft access easements that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and

acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such easements, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Registry of Deeds of Orange County. Within thirty (30) days of filing the easements, Respondents shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

c. To the extent that the Site or any other property to which access is required to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD is owned or controlled by persons other than a Respondent, Respondents shall use best efforts to secure from such persons access thereto for Respondents, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Order including, but not limited to, those activities listed in Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property to which access is required to implement this Order or the remedy selected in the OU1 ROD and OU2 ROD is owned or controlled by persons other than a Respondent, Respondents shall also use best efforts to secure from such persons the recordation in the Registry of Deeds of Orange County, New York, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the other Respondents and their representatives, or
- iv. other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Order, including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are requested, Respondents shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and/or access easements. If any access required by Subparagraph c. is not obtained within 45 days of the effective date of EPA's June 1997 Amendment of this Order, or within 45 days of the date EPA notifies the Respondents in writing that additional access beyond that

previously secured is necessary, or if any access easements requested by EPA under Subparagraph d. are not submitted to EPA in draft form within 45 days of a request by EPA for such easements, Respondents shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondents have taken to attempt to obtain access or access easements. EPA may, as it deems appropriate, assist Respondents in obtaining access or access easements.

o. Paragraph 74 is hereby amended to state as follows:

74. a. Respondents shall refrain from using the Site (or any other property affected by the remedy selected in the OU1 ROD and OU2 ROD) in any manner, or engaging in any other activities, that would interfere with or adversely affect the overall integrity or protectiveness of any of the remedial measures to be implemented pursuant to this Order. For example, Respondents shall not:

i. install or use any groundwater wells at the Site, except as specifically approved by EPA for the implementation of the Work; or

ii. undertake any use of the Site which would adversely affect the integrity of the cap and lined cell that are to be installed as part of the remedy.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Respondents, at which Institutional Controls are needed, each such Respondent shall 1) grant to one or more of the following persons or entities, as directed by EPA:

i. the United States, on behalf of EPA, and

its representatives,

- ii. the State and its representatives,
- iii. the other Respondents and their representatives, or
- iv. other appropriate grantees,

and 2) record in the Registry of Deeds of Orange County, New York, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Order. Respondents shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft deed restrictions that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such deed restrictions, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to

affect the title adversely, file the deed restrictions with the Registry of Deeds of Orange County. Within thirty (30) days of filing the deed restrictions, Respondents shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

c. To the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Respondent, Respondents shall use best efforts to secure a commitment by such persons to abide by the obligations and restrictions established by Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Respondent, Respondents shall also use best efforts to secure from such persons the 1) granting to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the other Respondents and their representatives, or
- iv. other appropriate grantees,

and 2) recordation in the Registry of Deeds of Orange County, New York, of Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be

performed pursuant to this Order. If such deed restrictions are requested, Respondents shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the effective date of EPA's June 1997 Amendment of this Order, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within 45 days of EPA's request for such deed restrictions, Respondents shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondents have taken to attempt to obtain such commitments or deed restrictions. EPA may, as it deems appropriate, assist Respondents in obtaining such commitments or deed restrictions.

f. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations or ordinances are needed to implement the remedy selected in the OU1 ROD and OU2 ROD, ensure the overall integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA's efforts to secure such governmental controls.

p. Paragraph 89 shall be amended by replacing the first sentence with the following:

Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in the event that Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. To the extent that such noncompliance occurs

prior to January 31, 1997, such civil penalties shall be in an amount not greater than \$25,000 per day of noncompliance. For noncompliance which occurs on or after January 31, 1997, such civil penalties shall be in an amount not greater than \$27,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 31, 1996).

### III. NOTICE OF INTENT TO COMPLY

3. Not later than five (5) days after the effective date of this Amendment, Respondents shall provide written notice to EPA's Remedial Project Manager ("RPM") stating whether they will comply with the terms of this Amendment. If Respondents do not unequivocally commit to perform the Work as provided by this Amendment, they shall be deemed to have violated the Order and to have failed or refused to comply with the Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Amendment, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondents' assertions.

### IV. EFFECTIVE DATE AND CONFERENCE OPPORTUNITY

4. This Amendment to the Order shall be effective fourteen (14) calendar days from the date of issuance of this Amendment, unless Respondents request a conference pursuant to Paragraph 5 below. If such a conference is timely requested, this Amendment to the Order shall become effective three (3) calendar days following the date the conference is held, unless the effective date is modified by EPA.

5. Respondents may, within thirteen (13) calendar days of the date of issuance of this Amendment to the Order, request a

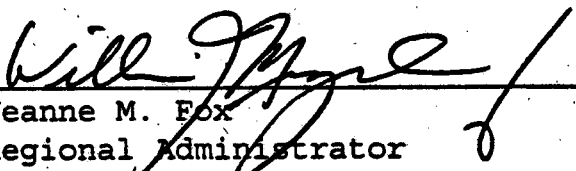


conference with EPA to discuss this Amendment to the Order. If requested, the conference shall occur within seven (7) calendar days of the Respondents' request for a conference.

6. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Amendment to the Order and the extent to which Respondents intend to comply with this Amendment to the Order. The conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Amendment to the Order. The conference does not give Respondents a right to seek review of this Amendment to the Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to the Respondents' request, the Respondents may appear in person or by an attorney or other representative.

7. Requests for a conference shall be made by telephone to Sharon E. Kivowitz, Assistant Regional Counsel, (212) 637-3183, followed by written confirmation mailed that day to Ms. Kivowitz at the Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Jeanne M. Fox  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

6/13/87  
Date